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STANLEY *v.* COMMONWEALTH.

Dec. 3, 1908.

[63 S. E. 10.]

**1. Criminal Law (§ 935\*)—New Trial—Verdict Contrary to Evidence.**—A motion for a new trial after a conviction of murder upon conflicting testimony of eyewitnesses is properly denied by the trial court.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 2297; Dec. Dig. § 935.\*]

**2. Criminal Law (§ 651\*)—Trial—View and Inspection.**—The purpose of a view is not to supply evidence, but to enable the jury to apprehend it.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1517; Dec. Dig. § 651.\*]

**3. Criminal Law (§ 1152\*)—Appeal—Review—Discretion.**—The discretion of the trial court in refusing a view of the premises by the jury cannot be controlled by the appellate court, unless it plainly appears from the record that a view was necessary to enable the jury to apprehend the evidence.

[Ed. Note.—For other cases, see Criminal Law, Dec. Dig. § 1152.\*]

**4. Homicide (§ 260\*)—Trial—View of Place of Homicide.**—Where a diagram of the dwelling in which the homicide occurred was produced and clearly explained, the court did not abuse its discretion in refusing a view of the premises.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. § 555; Dec. Dig. § 260.\*]

NASH ET AL. *v.* YELLOW POPLAR LUMBER CO.

Dec. 3, 1908.

[63 S. E. 14.]

**1. Deeds (§ 208\*)—Sufficiency of Evidence—Delivery.**—In an action for partition, evidence held to show that a deed previously executed by plaintiff had been delivered to the grantee, divesting plaintiff of all interest in the property.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 625; Dec. Dig. § 208.\*]

**2. Evidence (§ 210\*)—Admissions Against Interest—Deposition in Other Action.**—In an action for partition, plaintiff's deposition, in another action, that he had executed and delivered a deed for the premises in controversy, was admissible as an admission against his

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

interest and to contradict his testimony that such deed was never delivered.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 733; Dec. Dig. § 210.\*]

**3. Witnesses (§ 393\*)—Impeachment—Contradictory Statements—Former Testimony.**—Where plaintiff, in partition, testified that a certain deed executed by him, and purporting to convey the premises, had never been delivered, his deposition in a former action, testifying differently as to such delivery was admissible for the purpose of discrediting him as a witness.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 1255; Dec. Dig. § 393.\*]

**4. Estoppel (§ 70\*)—Conduct of Party—Sale of Land.**—Plaintiff, in an action for partition, was estopped to assert title to the premises, where he was present, aiding the apparent owner in making the sale under which defendants claimed title, and saw one-half or more of the purchase money paid without objection, and without asserting title to, or claiming an interest in, the land, and where the purchasers thereof did not know of plaintiff's claim and did not have convenient means of acquiring such knowledge.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. § 183; Dec. Dig. § 70.\*]

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SOUTHERN EXPRESS CO. *v.* JACOBS.

Dec. 3, 1908.

[63 S. E. 17.]

**1. Courts (§ 114\*)—Proceedings in Vacation—Remand to Rules.**—Under Code 1904, § 3293, providing that the court shall have control over all proceedings in the office during the preceding vacation, and may set aside any of the proceedings, or correct any mistake therein, and make such order concerning the same as may be just, where the clerk failed to enter in the rule book process executed, declaration filed, etc., the court could overrule defendant's motion to remand to rules on the ground that there was no entry by the clerk showing any proceedings at rules, and direct the proper entries to be made.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 368; Dec. Dig. § 114.\*]

**2. Judgment (§ 131\*)—Office Judgment—Entry of Rules.**—Where plaintiff had done all that was required to entitle him to his office judgment, he could not be prejudiced by the failure of the clerk to enter the rules properly as required by statute.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 131.\*]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.